VIRGINIA LAW REVIEW

Published Monthly, During the Academic Year, by University of Virginia Law Students

Subscription Price, $2.50 per Annum - - 35c per Number

ADMISSIBILITY AS EVIDENCE OF A WITHDRAWN PLEA OF GUILTY IN THE SAME TRIAL FOR THE OFFENSE.—A plea of guilty is a judicial confession and as such is sufficient to support a conviction without additional corroborating evidence.[1] It is a part of the record and derives its force from the fact that it is voluntarily and deliberately made, under the deepest solemnity, with the advice of counsel and the protecting caution and oversight of the judge. If it appears that the plea is made under misapprehension, inadvertence, or is not voluntary, the court will forbid its entrance,[2] or, if it has been so entered will permit its withdrawal, if within its sound discretion the demands of justice so dictate.[3]

The exceedingly meagre authority holding such a withdrawn plea inadmissible [4] has, without apparent justification on reason or justice, been thrown into conflict by the recent case of *State* v. *Carta* (Conn.), 96 Atl. 411. In this case the withdrawn plea was held admissible in evidence in a trial for the same offense as an extra-judicial confession, as showing conduct on the part of the accused

[1] See 1 Greenleaf, Evidence, 16th ed., § 216; People *v.* Converse, 74 Mich. 478, 42 N. W. 70.

[2] See State *v.* Willis, 71 Conn. 293, 308, 41 Atl. 820.

[3] State *v.* Maresca, 85 Conn. 509, 83 Atl. 635; Lowe *v.* Maryland, 111 Md. 1, 73 Atl. 637, 24 L. R. A. (N. S.) 439, 18 Ann. Cas. 744. For a full discussion of the grounds for withdrawal, and citations of cases, see Krolage *v.* People, 224 Ill. 456, 79 N. E. 570, 8 Ann. Cas. 235, and note.

[4] People *v.* Ryan, 82 Cal. 617, 23 Pac. 121.

inconsistent with his claim of innocence before the jury. This decision, to which there was a vigorous dissent, should give but scant satisfaction, as it seems contrary to law and eminently unfair to the accused. The text writers with practical unanimity unqualifiedly deny the admissibility of such a plea,[5] and the only other reported case directly in point is to like effect.[6]

The court in the instant case treated the plea as an extrajudicial confession, while as a matter of fact, because before the court, it is a judicial confession or nothing. As a plea it is a part of the record, and provable only as such, but when it is withdrawn that much of the record no longer exists. The case stands precisely as if the plea of not guilty had been interposed at first. In the light of the circumstances under which the plea was entered, the court to satisfy the demands of justice permitted its withdrawal, and with its disappearance has necessarily gone as an evidential factor, every fact which helped to make that confession admissible. It smacks of trickery to expunge from the record something which can have existence in no other way, and the next moment to give it force with all its injurious consequences. "No untoward judicial effect should result from the judicial rectification of a judicial wrong."[7] When the court permits a plea to be withdrawn, it *ipso facto* ceases to be of any force from that moment, either as a plea or as a confession. In a trial for murder the accused put in a plea of not guilty to murder in the first degree, and later a plea of guilty to murder in the second degree, which was accepted but afterwards withdrawn, and the defendant was convicted of murder in the first degree. The contention that the acceptance of the plea of guilty of murder in the second degree prevented conviction after its withdrawal of murder in a higher degree was overruled. The withdrawal "left the case without any plea whatever until the defendant again interposed her general plea of not guilty to the whole indictment."[8] So then, if a withdrawn plea leaves the case as if no plea had been entered, a decision holding a plea of guilty which the court refused to accept inadmissible,[9] is good authority for the inadmissibility of such a plea, which the court has permitted to be withdrawn. A member of the grand jury may testify as to an admission of guilt made before that body by the accused when he pleads not guilty on the subsequent trial;[10] but this is certainly no argument in favor of the admissibility of a withdrawn plea.[11]

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[5] Wharton, Criminal Evidence, § 638.

[6] People *v.* Ryan, *supra.*

[7] State *v.* Carta (Conn.), 96 Atl. 411, 415, dissenting opinion.

[8] People *v.* Cignarale, 110 N. Y. 23, 17 N. E. 125.

[9] State *v.* Myers, 99 Mo. 107, 12 S. W. 516. "The trial court could not refuse to receive the defendant's plea of guilty at one time and then use it against him at another."

[10] Browning *v.* State, 64 Tex. Cr. R. 148, 142 S. W. 1.

[11] A grand jury only hears evidence against the accused, and no pleadings whatever are filed, consequently there would be no analogy between such a case and one involving the admissibility of a withdrawn plea. A note in 25 Yale Law Journal 587, drawing this analogy, maintains the position of the principal case.

The interposition of a plea of guilty necessarily raises an almost irrebutable inference that benefit is hoped for. "It is impossible to show that a deliberate act like the interposing of a plea of guilty does not have its rise in the hope of leniency or some other benefit. A defendant interposes it because he prefers to submit his case to the court or he wishes to suppress facts that would come out in a trial before a jury which might implicate third parties or furnish clues in regard to himself in other transactions." [12]

If a plea of guilty is interposed, a conviction had, but a new trial is granted, and on the second trial a plea of not guilty is put in, on which the prosecution joins issue, the former plea of guilty not having been withdrawn, then such former plea of guilty, being still a matter of record, is admissible in evidence in the second trial.[13] The same is true if the plea is interposed before an examining magistrate but never withdrawn.[14] So too, a plea of guilty in a police court for the violation of a municipal ordinance is admissible in a subsequent trial for the same offense under a state statute when a plea of not guilty is interposed.[15] However, in all these cases the former plea of guilty is still a matter of record, and there has been no judicial determination of its incompetency, but rather the reverse, in that the trial judge, in accepting the plea, has thereby declared that all the conditions upon which such pleas are received have been satisfied. On the other hand, where the plea has been withdrawn, it is no longer a part of the record by which it could be proved. There has been a judicial determination that it was wrongfully accepted at first, and to undo this wrong its withdrawal is permitted. Again, in these instances, by virtue of the two trials, the accused has received the benefit accorded to him by his plea of guilty, and should be held to the onus put upon him. At no stage has he been wronged, or has a court been asked to rectify his inadvertent action. But this is different from making him bear a burden from which he has derived no benefit whatever, and which was only assumed under the expectation of some benefit.

The rule laid down by the decision of the instant case is pregnant with opportunities for grave injustice to the accused, when it is the decided policy of the law to grant him every protection possible. An innocent, but ignorant defendant, may have entered a plea of guilty through mistake, or even by reason of the fraud of the prosecuting attorney. To permit this to be introduced in evidence against him is to hold that a judicial rectification of this wrong, by permitting the plea to be withdrawn, is of no effect; for he is still burdened with all the injurious consequences of a confession, which in fact it is not, and receives none of its benefits. It actually places

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[12] 82 Central Law Journal 180.

[13] Commonwealth *v.* Irvine, 8 Dana (Ky.) 30; People *v.* Jacobs, 151 N. Y. Supp. 522.

[14] Green *v.* State, 40 Fla. 474, 24 South. 537. See State *v.* Bringgold, 40 Wash. 12, 82 Pac. 132.

[15] Bibb *v.* State, 83 Ala. 84, 3 South. 711; Ehrlick *v.* Commonwealth, 125 Ky. 742, 102 S. W. 289.

the accused in a less advantageous position than if he allowed his plea of guilty to remain. The fact that the former plea may be explained is not a sufficient protection to the accused. It "places upon him the burden of disproving a fact which does not exist, for the withdrawal eradicated it. It brings him before the jury under the heavy cloud of suspicion created by his plea of guilty when he is entitled to come before the jury with the presumption of innocence shielding him It makes him prove again that his plea was wrongly entered when that fact has already been judicially ascertained and settled by a court of competent jurisdiction."[16] The probable frequency with which circumstances allowing this point have arisen and the scarcity of decisions thereon would seem to justify the inference that no appeal has been taken, because, either prosecutors have withheld or the courts have excluded such evidence.

"PERSONAL INJURY IN THE COURSE OF EMPLOYMENT" UNDER WORKMEN'S COMPENSATION ACT.—While the general purpose of the workmen's compensation acts which have been adopted in the various states is the same, and their phraseology often similar and often resembling the English Workmen's Compensation Act, yet they vary in many details. One respect in which they widely differ is in the clause which defines the injuries for which compensation is to be given, although the acts may be divided into two very distinct classes as regards this clause. The English act, which is representative of one of the classes, provides that compensation shall be given for "personal injuries by accident arising out of and in the course of the employment." [1] The majority of the American statutes follow the English act in providing for "personal injuries by accident." [2] Several of them, on the other hand, provide that compensation shall be given for "personal injuries," without adding the qualification "by accident." [3] What is the

[16] State *v.* Carta, *supra,* dissenting opinion.

[1] Act of 60 & 61 Vict. c. 37, § 1.

[2] The American acts which provide for "personal injuries by accident" are the following: Alaska (Laws 1915, c. 71, § 4); Arizona (Code, § 3164); Colorado (Laws 1915, c. 179, § 8); Illinois (Act of June 28, 1913, § 1); Indiana (Laws 1915, c. 106, §§ 2, 8, 20, 76d); Kansas (Laws 1911, c. 218, 1); Louisiana (Act approved June 18, 1914, §§ 2, 28); Maine (Laws 1915, c. 295, §§ 8, 11); Maryland (Laws 1914, c. 800, §§ 14, 45, 62); Minnesota (Laws 1913, c. 467, §§ 9, 34); Nebraska (Laws 1913, c. 198, §§ 9, 10, 27); Nevada (Laws 1913, c. 111, § 1); New Hampshire (Laws 1911, c. 163, § 3); New Jersey (Laws 1911, c. 95, § 7); New York (Consolidated Laws, c. 31, § 206; c. 67, §§ 10, 3 (7)); Oklahoma (Act approved March 22, 1915, Art. 1, § 3 (7)); Oregon (Laws 1913, §§ 12, 21, 22); Pennsylvania (Laws 1915, Act No. 338, § 301); Rhode Island (Laws 1912, c. 831, Art. II, §§ 1, 2); Vermont (Acts of 1915, c. 164). See Digest of Workmen's Compensation Laws, 4 ed., by F. R. Jones.

[3] The American acts which provide for "personal injuries," as distinguished from "personal injuries by accident," are the following: California (Laws 1913, c. 176, § 12); Connecticut (Laws 1913, c. 138, Pt. B, § 1); Iowa (Laws 1913, c. 147, §§ 2477-m, m. 1); Massachusetts (Acts of 1911, c. 751, Pt. II, §§ 1-2); Michigan (Acts of 1912, No. 10, Pt. II, §§ 1, 2); Montana (Laws 1915, c. 96, §§ 6q, 16, 16j); Ohio (Code, §§ 1465-